

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**ORION IP, LLC,
a Delaware Limited Liability Corporation
Plaintiff,**

v.

**NIKE INC., et al.
Defendants.**

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Civil Action No. 2-06-CV-102-TJW

JURY DEMANDED

DOCKET CONTROL ORDER

<p>Tyler Trial Date October 9, 2007</p> <p>Court designated date – not flexible without good cause - Motion Required</p>	<p>9:00 a.m. JURY TRIAL as reached at the United States District Court, 211 W. Ferguson, 3 Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.</p>
<p><i>Day of Trial</i></p>	<p>EXHIBITS & EXHIBIT LISTS: Each party is requested to provide the Court with an original and two courtesy copies of exhibits and exhibit lists. The Court's preferred format for Exhibit Lists is available on the Court's website at www.txed.uscourts.gov under "Judges' Orders & Information."</p> <p>If exhibits are voluminous, provide only specific pages that pertain to the issues on the two courtesy copies. The original exhibits that are agreed upon by the parties, should be ready to be tendered to the Clerk of the Court at the beginning of trial. Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.</p> <p>The parties are further requested to have all exhibits labeled with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. For example:</p> <div style="display: flex; justify-content: space-around;"> <div data-bbox="618 1518 881 1688" style="border: 1px solid black; padding: 5px;"> <p>Plaintiff's Exhibit Exhibit No. _____ Case No. _____</p> </div> <div data-bbox="1000 1518 1263 1688" style="border: 1px solid black; padding: 5px;"> <p>Defendant's Exhibit Exhibit No. _____ Case No. _____</p> </div> </div>

Tyler October 1, 2007 Court designated date – not flexible without good cause - Motion Required	9:00 a.m. JURY SELECTION at the United States District Court, 211W. Ferguson, 3 Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.
Tyler Sept. 18, 2007 Court designated date – not flexible without good cause - Motion Required	9:00 a.m. PRETRIAL CONFERENCE at the United States District Court, 211 W. Ferguson, 3 Floor, Courtroom of Judge Leonard Davis, Tyler, Texas. (Tyler trial)
September 14, 2007	Parties to file estimates of the amount of time they request at jury selection and trial for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
September 14, 2007	Motions in Limine due. The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.
September 13, 2007	Pretrial Objections due.
August 29, 2007	Objections to Rebuttal Deposition Testimony due.
August 24, 2007	Rebuttal Designations and Objections to Deposition Testimony due. Cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
August 14, 2007	Pretrial Disclosures due. Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall file a disclosure identifying the line and page numbers to be offered.
July 25, 2007	Joint Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials due. Proposed Findings of Fact and Conclusions of Law with citation to authority for bench trials. Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Shea Sloan, at shea_sloan@txed.uscourts.gov.

July 24, 2007	Response to Dispositive Motions (including <i>Daubert</i> motions) due. Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> motions, shall be due in accordance with Local Rule CV-7(e).
Tyler July 9, 2006 Court designated date – not flexible without good cause – Motion Required	Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions); Motions for Summary Judgment shall comply with Local Rule CV-56 (Tyler trial).
July 3, 2007	Parties to Identify Rebuttal Trial Witnesses.
June 22, 2007	Parties to Identify Trial Witnesses; Amend Pleadings (after Markman Hearing). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would effect preliminary or final infringement contentions or preliminary or final invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.
June 15, 2007	Discovery Deadline.
May 30, 2007	Parties designate rebuttal expert witnesses (non-construction issues), Rebuttal expert witness reports due. Refer to Local Rules for required information.
April 30, 2007	Parties with burden of proof designate expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.
March 30, 2007	Comply with P.R.3-8 - Furnishing documents and privilege logs pertaining to willful infringement.
Tyler March 7, 2007	<i>Markman</i> Hearing at 10:00 a.m. at the United States District Court, 211 West Ferguson, 3 Floor, Courtroom of Judge Leonard Davis, Tyler, Texas (Tyler trial).
February 23, 2007	Parties shall jointly submit a claim construction chart on computer disk in WordPerfect format or in such other format as the Court may direct in accordance with P.R. 4-5(d).

February 21, 2007	<p>Parties to file a notice with the Court stating the estimated amount of time requested for the <i>Markman</i> Hearing. The Court will notify the parties if it is unable to accommodate this request.</p> <p>Comply with P.R. 4-5(c) - Reply brief and supporting evidence due re response to claim construction. The moving party is to provide the Court with 2 binders containing their reply brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p>
February 14, 2007	<p>Comply with P.R. 4-5(b) - Responsive brief and supporting evidence due to party claiming patent infringement. The moving party is to provide the Court with 2 binders containing their <i>Markman</i> brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their <i>Markman</i> brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p>
February 1, 2007	<p>Deadline for party seeking construction of terms in addition to those terms addressed in the Court's 12/15/05 Order in <i>Orion v. Staples</i>, or seeking reconsideration of such terms, to file an opening brief and any evidence supporting its proposed claim construction.</p> <p>The moving party is to provide the Court with 2 binders containing their <i>Markman</i> brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their <i>Markman</i> brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p>
January 25, 2007	<p>Deadline for parties, if they desire, to provide Court with tutorials concerning technology involved in patent. If a technical advisor has been appointed, each party that provides a tutorial shall provide a copy to the advisor.</p>
January 18, 2007	Discovery Deadline - Claim Construction Issues.
January 10, 2007	Respond to Amended Pleadings.
January 5, 2007	<p>Parties to provide name, address, phone number, and curriculum vitae for three (3) agreed technical advisors and information regarding the nominees' availability for <i>Markman</i> hearing or a statement that they could not reach an agreement as to any</p>

	potential technical advisor.
December 21, 2006	Amended Pleadings (pre-claim construction) due from all parties. It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, if the amendment would affect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.
December 18, 2006	Comply with P.R. 4-3 - Filing of Joint Claim Construction and Prehearing Statement. Comply with P.R. 4-3 – Filing of Joint Claim Construction and Prehearing Statement. If either party indicates an intention to call one or more witnesses in the Joint Claim Construction and Prehearing Statement under P.R. 4-3(d), the party shall file a separate brief describing the content of the testimony and the reasons that party believes the testimony is necessary. The party is to indicate whether the other sides opposes such testimony. If the other side opposes such testimony, the opposing party shall file a responsive brief within 12 days.
November 17, 2006	As to any new terms Defendants wish to present for claim construction, comply with P.R. 4-2 – Exchange of Preliminary Claim Constructions and Extrinsic Evidence Privilege logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).
September 25, 2006	As to any new terms Defendants wish to present for claim construction, comply with P.R. 4-2 – Exchange Proposed Terms and Claim Elements for construction.
September 13, 2006	Comply with P.R. 3-3 - Preliminary Invalidity Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to Patent Rule 3-7. Add any inequitable conduct allegations to pleadings. It is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings prior to this date. Thereafter, it is necessary to obtain leave of Court to add inequitable conduct allegations to pleadings.
July 31, 2006	Comply with P.R. 3-1 and P.R. 3-2 - Disclosure of Asserted Claims and Preliminary Infringement Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend infringement contentions, pursuant to Patent Rule 3-7.

	<p>Join Additional Parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.</p> <p>Add new patents and/or claims for patents-in-suit. It is not necessary to file a motion to add additional patents or claims prior to this date. Thereafter, it is necessary to obtain leave of Court to add patents or claims.</p>
October 20, 2006	<p>Mediation to be completed. Michael Phillip Patterson, (903) 592-4433, mpmediation@cox-internet.com, is appointed as mediator in this cause. The mediator shall be deemed to have agreed to the terms of Court Ordered Mediation Plan of the United States District Court of the Eastern District of Texas by going forth with the mediation in accordance with this order. General Order 99-2.</p>
10 days	<p>EXPECTED LENGTH OF TRIAL</p> <p>10 days is currently the expected length of trial based on the existing number of defendants and the expectation that all of those defendants will remain in the case up to and including trial. If any of the Defendants settle prior to trial, the number of days needed for trial may decrease.</p>

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has 15 days in which to serve and file supporting documents and briefs after which the Court will consider the submitted motion for decision.

OTHER LIMITATIONS

- (a) All depositions to be read into evidence as part of the parties’ case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (b) The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).

- (c) The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
- (i) The fact that there are motions for summary judgment or motions to dismiss pending;
 - (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
 - (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

So ORDERED and SIGNED this 20th day of July, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**